

Nevada State Board of NURSING NEWSLETTER

October 2000

Public Information Policy Revised

Nevada public records law requires
release of personnel information

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1755 E. Plumb Lane
Suite 260
Reno, NV 89502
775-688-2620

4330 S. Valley View
Suite 106
Las Vegas, NV 89103
702-486-5800

Web site address—
nursingboard.state.nv.us

At its September meeting, the Board revised its public information policy in response to a lawyer's request to release personnel lists it collects from health care facilities.

On May 3, 2000, southern Nevada attorney Jeffrey Fisher requested the Board release the list of RNs employed by the University Medical Center (UMC) nearest the date of September 15, 1998. In his letter, Mr. Fisher cited Nevada's public records law.

Nevada Revised Statute 632.125(1) requires all health care facilities to submit to the Board lists of all their nursing personnel at least three times a year. To ensure nursing professionals have active licenses, the Board checks the lists against its database of active licensees and certificate holders.

The Board, which had never before received a request to release the personnel lists, had previously considered them confidential. After it received the request from Mr. Fisher, it consulted with the Nevada Attorney General's Office regarding how the public records law might apply to these facility personnel lists. After all, the Board reasoned, the lists are not collected for a public purpose. However, nothing in Nevada nursing law specifically addresses the issue.

The Attorney General's Office advised the Board it has the authority to use the "balancing test" when the law is silent on whether or not certain information or documents are public or confidential. It further advised that when using the balancing test, it is important that the outcome, whether the outcome is toward disclosure (public) or nondisclosure (confidential), be made with the public interest as the guide.

It said the question to ask was which outcome best protects the public or best serves the

public interest. The Attorney General's Office added that factors in favor of openness should be given more weight.

However, it said there is a constitutional right of privacy for individuals, when there is legitimate expectation of privacy with highly sensitive and personal information that a reasonable person would not want someone to know.

At their September meeting and within the framework of the advice given by the Attorney General's Office, the Board members applied the "balancing test" to the question of whether the personnel lists were public or confidential.

They discussed the issue at great length, and all expressed their discomfort and reluctance to release to the public information that was not originally collected for a public purpose.

Ultimately, however, the Board members agreed that, under Nevada's public records law, they must deem public the names and license or certificate numbers on the health care facility personnel lists.

Using the balancing test, they decided a person's place of employment could not be considered "highly sensitive and personal information" when other licensing boards release employment information.

In making their decision, they emphasized that nurses and CNAs need to be aware that this information is considered public. Representatives from UMC were at the meeting. The Board directed staff to comply with Mr. Fisher's public records request within 30 days.

Since the Board's September decision, staff has released to Mr. Fisher the names and license numbers of RNs employed at UMC nearest September 15, 1998. It is currently in the process of responding to another request from Mr. Fisher for the names and license numbers of RNs employed at UMC from its most recent personnel list.

BOARD MEETINGS

A seven-member board appointed by the governor, the Nevada State Board of Nursing consists of four registered nurses, one practical nurse, one certified nursing assistant and one consumer member. Its meetings are open to the public; agendas are posted on the Board's web site and at community sites.

Board Meeting Dates

November 16-17
Reno

ADVISORY COMMITTEE MEETINGS AND OPENINGS

The openings (listed in parentheses) will occur in the next six months.

Advanced Practice Advisory Committee (none)
November 28, 2000

CNA Advisory Committee (one—a long-term care representative)
November 29, 2000

Disability Advisory Committee (two)
November 8, 2000

Nursing Practice Advisory Committee (none)
November 8, 2000

Disciplinary Actions

Before disciplinary action is taken, the Board ensures the nurse or nursing assistant is given due process

If the Nevada State Board of Nursing receives information that a nurse or nursing assistant may have broken the law (the Nevada Nurse Practice Act), the Board has the authority to investigate.

It will investigate if the complaint is received in writing, names a nurse or nursing assistant who is licensed or certified in the state of Nevada, is signed by the person making the complaint, and alleges a violation of the Nurse Practice Act.

Before disciplinary action is taken, the Board ensures the nurse or nursing assistant is given due process, which requires giving adequate notice, a description of the charges, and a hearing or the opportunity for a hearing.

The individual also has the right to a formal hearing, the right to an attorney, the right to not participate in an informal hearing, the right to not sign anything, the right to see the complaint, and the right to appeal.

If the evidence doesn't support the allegations, the complaint may be dismissed or closed. If the evidence does support the allegations, the Board can take disciplinary action against the individual.

Disciplinary action can include denial, reprimand, fine, suspension, probation, or revocation of a license or certificate. The Board considers each case individually.

The disciplinary penalty is determined based on a number of factors which include the severity and recency of the offense, degree of deviation from standard practice, evidence of rehabilitation, current ability to practice safely, mitigating factors, and past disciplinary history.

The law gives the Board nondisciplinary options, including a very successful program which allows qualified, chemically dependent nurses and nursing assistants to re-enter the workforce in a paced sequence. It also monitors their recovery to ensure the safety of patients.

The following are disciplinary actions taken by the Board for the period of January 21, 2000 through March 24, 2000.

Bills, Heather, CNA Applicant
Two-year Disciplinary Probation for violation of NRS 632.320 (2) convictions related to nursing.
Burrus, William, RN22510
Agreement for Probation (Disciplinary) for violation of NAC 632.890 (7) failing to supervise.
Cotton, Dithra, CNA Applicant
Application denied for violation of NRS 632.320 (2) convictions related to nursing.
Farias, Ileane, CNA3023
Agreement for Reprimand and class for violation of NAC 632.890 (38) violation of professional boundaries.
Filippo, Jennifer, LPN9853
Agreement for Reprimand and Fine in the amount \$200.00 for violation of NAC 632.890 (36) practicing without a license.
Hall, Edith, LPN8834
Agreement for Probation (Disciplinary) accepted for violation of NRS 632.320 (7) unprofessional conduct.
Haines, Constance, RN31036
Voluntary Surrender of License in Lieu of Other Disciplinary Action for violation of NAC 632.890 (18) diversion.
Herrick, Jahn, RN Applicant
Application denied for violation of NRS 632.320 (2) convictions related to nursing.
Imbault, Denise, RN28233
Agreement for Fine in the amount of \$100.00 for violation of NAC 632.890 (36) practicing without a license.
Knight, Casey, CNA11467
Agreement for Reprimand for violation of NAC 632.890 (22) patient abandonment.
Lord, Shirley, CNA118
Agreement for Reprimand for violation of NRS 632.320 (1) fraudulent application (forged CEs).
Luz, Joanna, LPN8166
Voluntary Surrender of License in Lieu of Other Disciplinary Action for violation of NRS 632.320 (7)(a) verbal abuse of a patient.
Martin, Monette, RN/APN Applicant
Agreement for Probation (Disciplinary) for violation of NRS 632.320 (2) convictions.

Moayed-Rezaei, Fereshteh, CNA Applicant
Application denied for violation of NRS 632.320 (2) convictions related to nursing.
Mooney, Darlene, CNA428
Voluntary Surrender of Certificate in Lieu of Other Disciplinary Action for violation of NRS 632.320 fraudulent application (forged CEs).
Moore, Jacqueline, CNA9852
Board ordered a Public Reprimand and remediation classes for violation of NAC 632.890 (32) endangering the safety of coworkers by carrying out an act of violence.
Mullner, Ellen, RN22564
Agreement for Reprimand for violation of NRS 632.320 (7) unprofessional conduct.
Parker, Joanna, RN20307
Agreement for Reprimand and Classes for violation of NAC 632.890 (27) customary standards.
Petit, Ann, CNA11494
Agreement for Reprimand for violation of NRS 632.320 (1) fraudulent application (forged documentation of 400 hours employment).
Preciado, Tina, CNA8547
Renewal Application for certification denied for violation of NRS 632.320 (2) convictions.
Quilici, Linda, RN3756
Board ordered a Five year Disciplinary Probation for violation of NRS 632.320 (14) violation of a Board order.
Rush, Louise, RN23901
Agreement for Probation (Disciplinary) for violation of NRS 632.320 (2) criminal convictions and (11) falsifying information given to a pharmacist.
Smith, Karyn, RN22769
Board ordered a one-year Disciplinary Probation for violation of NRS 632.320 (1) fraudulent application (forged CEs).
Smith, Kristen, CNA12137
Board ordered certificate suspended until completion of the requirements of the previous Board order for violation of NRS 632.320 (14) violation of a Board order.
Springer, Victoria, LPN9789
Agreement for Reprimand for violation of NRS 632.320 (1) fraudulent application (forged CEs).

NRS — Nevada Revised Statutes
NAC — Nevada Administrative Code

Questions? Call Debra Scott,
Associate Executive Director
for Nursing Practice, in Reno.

Review Of Nurse Discipline

Exhaustive review shows Board preserves rights of nurses while protecting rights of the public

The Nevada Nurses Association (NNA) recently questioned the disciplinary function of the Nevada State Board of Nursing. Without presenting any evidence, NNA said a perception existed that the Board violated the due process rights of registered nurses (RNs) and discriminated against RNs based on age, race and gender.

At the request of NNA, the Board made available for review the discipline files of every registered nurse disciplined between July 1, 1996 and June 30, 1999.

The results of that review show the Board's disciplinary process preserves the rights of the RNs, while protecting the right of the public to safe, competent nursing care.

After receiving a written request, Kathy Apple, M.S., R.N., the Board's executive director, met with Dorothy Riley, Ph.D., R.N., NNA's president. Together, they developed a process that both agreed would meet the goal of providing an independent review with integrity.

They agreed on the selection of two reviewers: Ellie Lopez-Bowlan, M.S.N., R.N., A.P.N., a new member of the Board, and retired nurse Jerry Stanfield, M.S.Ed., B.S.N., R.N. Both are members of NNA.

According to the agreed-upon process, the reviewers met in the Board offices, viewed the files, and recorded the results on a *Disciplinary File Review* worksheet.

After four weeks of review, Ms. Lopez-Bowlan was unable to continue due to an employment commitment. Ms. Riley and Ms. Apple agreed on the selection of MaryAnn Lambert, M.S.N., R.N., to complete the review with Mr. Stanfield. Ms. Lambert is an assistant professor of nursing with the Orvis School of Nursing and a member of NNA. She is also a member of the Board's Nursing Practice Advisory Committee.

The review, which was done over a period of seven months, caused the Board to expend a great deal of resources, including the cost of identifying, organizing, and pulling 171 files from storage. The review required considerable staff hours from the Board's executive director, associate executive director for nursing practice, senior deputy attorney general, and investigative clerk. Also, the three volunteers spent countless, unpaid hours of their own time reviewing the files.

While the review process was extensive and exhaustive, all three reviewers found the NNA perceptions to be without foundation in fact.

As Mr. Stanfield wrote, "I am happy to report that I noted no evidence of any bias, prejudicial or inconsistent actions, or any failure to follow guidelines designed to protect the rights of nurses who had had complaints filed against their practice."

The Board understands that being the subject of a complaint is a frightening process for the nurse. It also understands no nurse wants to be disciplined. Unfortunately, while many disciplined nurses are ultimately grateful for the opportunity to become safer nurses, a small number don't feel they should be held accountable for their actions.

While this review was very expensive, the Board felt it was an opportunity to correct misperceptions.

NNA has been invited to discuss the results of the review directly with the Board members during their regularly scheduled meeting, November 16-17, 2000.

Summary of file review results

■ On an annualized basis, the 171 discipline cases represent less than one-half of one percent of the average total RN population of 13,701 over the three years of the review period.

■ The typical disciplined RN in Nevada is white, 45 and female—a finding consistent with the results of other state studies.

■ Due process, "... the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice," (Black's Law Dictionary) was given in every single case.

Discipline ranged from reprimand to revocation Of the 174 discipline actions taken on the 171 cases, 4 were suspensions, 19 were revocations, 43 were voluntary surrenders, 39 were probations, 34 were fines (all for practicing without a license), and 35 were reprimands.

13.5% of discipline cases concerned just 11 RNs The 171 discipline cases involved only 159 RNs, since 11 RNs were the subject of more than one case.

Typical citations Practicing without a license was cited in 28 cases; fraud in 10; criminal backgrounds in seven; unprofessional conduct in 21; impairment (controlled substances or alcohol) in 18; soliciting from patients/relatives in 9; practicing beyond scope in 15; and failure to comply with a Board order in 16.

Contact

Nevada State
Board of Nursing

ADMINISTRATION, DISCIPLINE AND INVESTIGATION

1755 E. Plumb Lane
Suite 260
Reno, NV 89502
phone - 775-688-2620
fax - 775-688-2628
email - nsbnreno@govmail.state.nv.us

LICENSURE, CERTIFICA- TION, RENEWAL AND CONTINUING EDUCATION

P.O. Box 46886 (89114)
4330 S. Valley View
Suite 106
Las Vegas, NV 89103
phone - 702-486-5800
fax - 702-486-5803
email - nsbnlv@govmail.state.nv.us

WORLD WIDE WEB
nursingboard.state.nv.us

Coming Up For Renewal?

Follow these tips to avoid
a license lapse

■ **Notify the Board immediately** of any address change. Your renewal application is sent to your address of record two months before your expiration date.

■ **When you receive your renewal** applica-
tion, take a few moments to complete and mail it.

■ **If you have any questions** about how to fill out forms or applications, call the Las Vegas office as soon as you receive your renewal. This will give you enough time to obtain any additional documents you may need, such as continuing education certificates.

■ **Make sure you have answered** all the questions and met all the requirements. Your application will be returned to you if it is incomplete and the delay could cause your license to lapse.

We just wanted to say thank you!

The majority of nurses renew ahead of time, have their CEs done and submit them when asked, send the right amount of money, and complete the form correctly and completely. To all of you who make the renewal process a smooth one, the Board says, "Thank you!"

**TOLL-FREE
CONSUMER HOT LINE
800-746-3980**

or in the Reno calling area, 688-2620

The Nevada State Board of Nursing has a hot line to help consumers who have questions or concerns about the nursing care they or their loved ones are receiving.

Please encourage your friends, families and patients to call the hot line if they have concerns about nursing care. And remember, if you or anyone else wishes to file a complaint against a nursing assistant or nurse, it must be done in writing. Complaint forms can be requested by calling the hot line.

Don't Throw Your License Away

It comes in a plain white envelope

The Board has been hearing from nurses who have thrown their hard card license away, thinking it was a piece of junk mail or an unsolicited credit card. For security purposes, CardPro, the company which produces the hard card license for the Board, sends it in a plain white envelope with a gray stripe on the left hand side with only the Board's P.O. Box as a return address. So if you're expecting your hard card, don't accidentally throw away that plain white envelope.

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NURSING NEWSLETTER

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of Nursing
P.O. Box 46886
Las Vegas, NV 89114

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